

**VIRGINIA BOARD OF DENTISTRY
MINUTES
DECEMBER 12, 2008**

- TIME AND PLACE:** The meeting of the Board of Dentistry was called to order at 9:10 A.M. on December 12, 2008 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.
- PRESIDING:** Meera A. Gokli, D.D.S., President
- BOARD MEMBERS PRESENT:** Jeffrey Levin, D.D.S., Vice President
Jacqueline G. Pace, R.D.H., Secretary-Treasurer
Paul N. Zimmet, D.D.S.
Darryl J. Pirok, D.D.S.
James D. Watkins, D.D.S.
Robert B. Hall, Jr. D.D.S.
Augustus A. Petticolas, Jr. D.D.S.
- BOARD MEMBERS ABSENT:** Myra Howard, Citizen Member
Misty Mesimer, R.D.H.
- STAFF PRESENT:** Sandra K. Reen, Executive Director for the Board
Sandra Whitley-Ryals, Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant
- OTHERS PRESENT:** Howard M. Casway, Senior Assistant Attorney General
- ESTABLISHMENT OF A QUORUM:** With eight members of the Board present, a quorum was established.
- PUBLIC COMMENT:** **Ralph L. Howell, D.D.S.**, president of the Virginia Dental Association, asked the Board to:
- establish policies to stop the erosion of ethics in advertising and in competing fairly,
 - address access to care by broadening the scope of practice of dental auxiliaries,
 - track where licensees practice and how many days they work, and
 - curb the practice of dentistry without a license noting that areas of concern were bleaching, grills, and snoring devices.

APPROVAL OF MINUTES:

Dr. Gokli asked if the Board members had reviewed the minutes in the agenda package. Dr. Watkins asked that the minutes be amended on page 4 in his report on SRTA to:

- state “Alabama is considering joining” instead of “Alabama has decided to join.”
- correct spelling of “Spears” to “Speer”, and
- on page 8, he stated that he did not recall including a change in the number of continuing education hours to be required in his motion on the agency subordinate recommendation.

Dr. Gokli tabled this matter so that Ms. Reen might check her notes from the September 12, 2008 meeting. When this discussion resumed, Ms. Reen reported that her notes do show that the motion did include increasing the number of hours of continuing education in implant placement and management from 4 hours to 16. Dr. Zimmet moved to accept the minutes of the September 12, 2008 meeting as amended on page 4. The motion was seconded and carried.

DHP DIRECTOR’S REPORT:

DHP Performs. Ms. Ryals reviewed the last quarter’s results for the agency and the boards of Nursing, Medicine and Dentistry to show the progress being made on the 250 day goal for case resolution. She applauded the Board for its work on:

- reducing the backlog and achieving a 202% clearance rate,
- reducing the percentage of old cases to 45%, and
- closing 81% of new cases within 250 business days

Proposed Legislation. Ms. Ryals discussed three pieces of legislation:

- an amendment to §54.1-2722 which will allow the Department of Health to do a pilot on using dental hygienists more effectively to meet treatment needs in underserved areas.
- revisions of several Code sections addressing the Health Practitioners’ Intervention Program (HPIP). She reported that she is negotiating with Virginia Commonwealth University to extend the current program and anticipates a signed agreement next week. Ms. Ryals noted that the legislative proposal will:
 - continue the program and the provisions for a stay of disciplinary action,
 - allow a fee to be charged for participation,
 - scale back the services offered and make clear that the program itself is not a treatment program, and
 - change the name of the program to the Health Practitioners’ Monitoring Program (HPMP)

Dr. Petticolas asked where in the bill it says that participants will pay. Ms. Ryals directed him to the permissible language in §54.1-2516 and talked about this and other options such as creating a scholarship fund for covering the costs of the program. Dr. Levin suggested a low interest loan might be another avenue to help participants. Dr. Gokli commented that it is important to keep this program.

- revisions to the Prescription Monitoring Program (PMP) which will allow prescribers to post notice rather than obtain consent and permit agreements for sharing information with other states.

Enforcement Discussion:

James S. Johnson, Enforcement Deputy Director, gave a power point presentation on enforcement activities highlighting the investigation of dentistry cases. Mr. Johnson introduced Shannon Roberson, Case Intake Analyst for Dentistry and stated that Mr. Roberson takes all the complaints, reads them, prioritizes them, and determines if there is enough information to develop the case. Included in the presentation was information on the:

- role of enforcement
- number of complaints received noting that 4152 complaints were received in Fiscal Year 2008 compared to 4454 in Fiscal Year 2007
- sources of complaints
- assignment of case priorities, and
- typical Investigation.

Dr. Zimmet asked if the problem with the reproduction of x-rays had been solved. Mr. Johnson said progress has been made but there are still issues from time to time.

REPORTS:

Board of Health Professions (BHP), Dr. Gokli said she had no report because the BHP has not met since the last board meeting.

Executive Committee Meeting. Dr. Gokli reported that the Executive Committee met this morning and discussed:

- the Bylaws without identifying any changes to propose and
- possibly having the Board adopting codes of conduct which the committee will address further at its next meeting.

SRTA. Dr. Watkins reported that the SRTA board met three times in the last three months. He advised that Alabama has not yet joined and that SRTA met with the University of Florida about examining there. He also reported on an upcoming strategic planning meeting and indicated that SRTA is operating in the black. He asked anyone planning to do an exam to see him about examination assignments and said that Ms. Reen would send out assignments by e-mail. Ms. Reen reminded Board members that SRTA trips must be approved before their trips so she asked them to remind SRTA to send needed information as early as possible.

Regulatory/Legislative Committee. Dr. Watkins reviewed the 12-03-2008 Draft Minutes of the Regulatory/Legislative Committee Meeting noting the work on the regulation of dental assistants II (DAsII). He stated that the Committee is considering changing the meaning of "direction" and adding a third level of supervision to be required for the expanded duties. He also said the Committee wants to allow up to four DAsII per dentist and to increase the number of dental hygienists a dentist might supervise to four and to allow dental hygienists with

training to perform the new delegable duties. He asked for a sense of the Board on proceeding with the proposed delegable duties for DASII indicating that it would help the Committee solicit information on training requirements from the accredited community college dental assisting programs. Following discussion, Dr. Gokli advised the Committee to proceed with its proposal. Dr. Watkins reported that over 1000 comments were received on the NOIRA and that most of the comments opposed allowing delegation of scaling to DASII. He also noted that the Committee would ask specialty organizations to comment on the delegable duties once it has proposed language. He also reported that the Committee is working on a guidance document on sedation and anesthesia and resumed work on regulatory review.

Healthcare Workforce Data Center. Dr. Pirok reported on the October 3, 2008 meeting to discuss the new center at DHP. He reported that there are three states, North Carolina – Arizona – Iowa, currently collecting healthcare workforce data. He said the DHP center will address the supply and demand in the healthcare workforce with an initial focus on physicians and nurses. Dr. Levin asked if this is another vehicle to gather information. Ms. Ryals responded yes and that work has begun on developing surveys for licensees to complete as part of license renewals.

**LEGISLATIVE AND
REGULATION:**

Ms. Yeatts noted that there is nothing further to report in regard to legislation that may be of interest to the Board and no action on regulations needed.

**BOARD
DISCUSSION/ACTION:**

The following agenda items were received as information with no action being taken:

- **ADEX letter – Clinical Licensing Examinations**
- **Alabama Board Letter to ADA**
- **Louisiana Board Letter to ADA**
- **Mississippi Board Letter to ADA**
- **North Carolina Board Letter to ADA**
- **WREB Scoring**
- **VDHA Letters on CODA Standards**

**REPORT ON CASE
ACTIVITY:**

Mr. Heaberlin thanked the Board for the significant strides made in processing cases so that the number of open cases has declined to 172 as of December 11, 2008. He advised that his focus was still on reducing the number of old cases to meet the 25% standard. He said cases are being sent out for probable cause review as they are received so there is no blitz day in the immediate future. Ms. Ryals extended her compliments and suggested that the Board use pre-hearing consent orders as much as possible to avoid waiting for informal conferences. Ms. Reen said the Board is using this tool as well as advisory letters and CCAs.

**EXECUTIVE
DIRECTOR'S
REPORT/BUSINESS:**

Staff Update. Ms. Reen introduced Ms. Vu to the Board, stating that Ms. Vu is now serving as her administrative assistant for Board business. She said Ms. Vu will be working with Board members on travel planning and reimbursement.

Guidance Document 60-6. Ms. Reen presented a proposed amendment of Guidance Document 60-6 on the "Policy on Sanctioning for Practicing with an Expired License" which updates the policy to allow staff to use advisory letters for licenses that were lapsed for 30 days or less and allows either a board member or staff person to make probable cause decisions on cases where the license was lapsed for more than 30 days. Dr. Watkins moved to adopt the amended guidance document as proposed. The motion was seconded and carried.

Cosmetic Certification Application. Ms. Reen asked the Board to allow her to now use Oral Maxillofacial Surgeons with certification to review applications for cosmetic certification and to reduce the number of reviewers from 3 to 2. There was discussion of having the applications reviewed by one reviewer. Following discussion, Dr. Zimmet moved to use 2 reviewers from the pool holding certification. The motion was seconded and carried.

OMS Quality Assurance Review. Ms. Reen reported that the second Oral Maxillofacial Surgeon (OMS) Quality Assurance Review has started for the period of January 2005 to December 2007. She said this review addresses 19 OMS and that only 11 do these procedures in their offices. Investigators obtained 97 patient records for review and she is in the process of obtaining an out-of-state expert to review the records. No one from the adjoining states of Maryland and North Carolina has been found to take on this task and she is talking with two surgeons, one from Pennsylvania and one from Florida, who may be interested.

Probation. Ms. Reen advised the Board that it was important for reporting purposes for special conference committees to place respondents on probation when terms are being imposed to monitor practice due to patient care concerns. Mr. Casway supported this request saying that it would help other states understand the licensee's status. Following discussion, staff was instructed to add this language when needed.

**BOARD COUNSEL
REPORT:**

Attorney Roundtable at AADE – Mr. Casway thanked the Board and Ms. Ryals for sending him to the annual meeting. He reported that the opportunity to discuss the management of current issues with other states was very helpful. He then reviewed the discussions that took place on the following topics:

- options for recuperating costs for disciplinary actions,
- actions to address teeth whitening by unlicensed providers,
- policy strategies on the use of overseas dental laboratories, and

- criminal background checks.

Litigation - Mr. Casway reported that:

- a motion made by Ms. Moore on behalf of the Board to dismiss Dr. Taylor's appeal of the Board Order denying reinstatement of his license is scheduled for February 18, 2009 in Hampton.
- Dr. Coleman has exhausted his appeals so the case is over. He added that the stay on the Board Order at issue in this case has been vacated by the Circuit Court.
- He is awaiting the final papers from the Fairfax Circuit Court to complete Dr. Zurmati's case.

**Credentials Committee
Recommendation:**

Case # 11857

Closed Meeting:

Dr. Levin moved that the Board convene a closed meeting pursuant to § 2.2-3711.A(28) of the Code of Virginia for the purpose of consideration and discussion of a recommended decision from the Credentials Committee. Additionally, Dr. Levin moved that Board staff, Sandra Reen and Huong Vu, and board counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene:

Dr. Levin moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Zimmet moved to accept the recommended Order of the Credentials Committee with amendments to require that the terms of the Order be met within 30 days. The motion was seconded and carried unanimously.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 12:45 p.m.

Meera A. Gokli, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date